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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/482,990	01/15/2000	Peter Heitkamper	Mo-5278/LcA 33,335	7774

7590 07/09/2002

Patent Department
Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205-9741

EXAMINER

GORR, RACHEL F

ART UNIT PAPER NUMBER

1711

14

DATE MAILED: 07/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

PT-2-17

Office Action Summary	Application No.	Applicant(s)	
	09/482,990	HEITKAMPER ET AL.	
	Examiner	Art Unit	
	Rachel Gorr	1711	

-- *Th MAILING DATE of this communication app ars on th cover sh t with the corresp nd nce address --*

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-11 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Windemuth.

Windemuth discloses, in example 3, a prepolymer comprising 79 wt. % polyester diol having a molecular weight of 1800 and about 19 wt. % tetramethyl p phenylenediisocyanate (durene diisocyanate). The chain extends with water, which would make the polyurethane cellular. The coating of Windemuth has a shape, and the density of the polyurethane would fall within the specified range of the claims. The polyurethane would be the same regardless of what catalyst is used.

3. Applicant's arguments filed 6-6-02 have been fully considered but they are not persuasive. The applicants argue that Windemuth doesn't show shaped articles. The examiner contends that a coating is a shaped article.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott in view of Henn.

6. Scott discloses a polyurethane elastomer comprising a polyester polyol having a molecular weight of 500-5000 (col. 1, line 71), a hydroxy containing chain extender (col. 2, line 49) and durene diisocyanate (col. 3, line 27). At the bottom of col. 1, he discloses using one mole equivalent of polyester, 1-3 moles of chain extender, and 2-4 moles diisocyanate. In col. 3, line 55, he discloses adding fillers to his elastomer. The densities would be the same because the elastomers are the same. He differs from the claims by listing durene diisocyanate in a list with four other diisocyanates, and he differs from the dependent claims by not showing the prepolymer process.

7. Henn teaches that polyurethane elastomers made from prepolymers in which the chain extender is included in the prepolymer (see abstract). At the top of col. 5, he discloses that the resulting elastomers have better properties than those made by the one shot method (top col. 19).

8. It would have been obvious to use durene diisocyanate in the invention of Scott because it has been held obvious to choose one from a limited number of choices. It would have been obvious to use the prepolymer method of Henn because Henn teaches obtaining elastomers having properties superior to those made from the one shot process of Scott.

9. Claim 3 is objected to for depending on rejected claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel Gorr whose telephone number is (703) 308-

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3608. The examiner can normally be reached on Mon., Tues., Thurs., Fri., from 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

R.G.
July 1, 2002


RACHEL GORR
PRIMARY EXAMINER